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U.S. Department of Education

The Civil Rights of Students With Hidden Disabilities and Section 504

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INTRODUCTION

If you are a student with a hidden disability or would like to know more about how students with hidden disabilities are protected against discrimination by Federal law, this pamphlet is for you.

Section 504 of the Rehabilitation Act of 1973 protects the rights of persons with handicaps in programs and activities that receive Federal financial assistance. Section 504 protects the rights not only of individuals with visible disabilities but also those with disabilities that may not be apparent.

Section 504 provides that: **"No otherwise qualified individual with handicaps in the United States . . . shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to**

discrimination under any program or activity receiving Federal financial assistance...."

The U.S. Department of Education (ED) enforces Section 504 in programs and activities that receive financial assistance from ED. Recipients of this assistance include public school districts, institutions of higher education, and other state and local education agencies. ED maintains an Office for Civil Rights (OCR), with ten regional offices and a headquarters office in Washington, D.C., to enforce Section 504 and other civil rights laws that pertain to recipients of ED funds. (The addresses and telephone numbers of the OCR regional offices are included at the back of this pamphlet.)

This pamphlet answers the following questions about the civil rights of students with hidden disabilities and the responsibilities of ED recipients:

- What disabilities are covered under Section 504?
- What are hidden disabilities?
- What are the responsibilities of ED recipients in preschool, elementary, secondary, and adult education?
- What are the responsibilities of ED recipients in postsecondary education?
- How can the needs of students with hidden disabilities be addressed?

DISABILITIES COVERED UNDER SECTION 504

The ED Section 504 regulation defines an "individual with handicaps" as any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. The regulation further defines a physical or mental impairment as (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The definition does not set forth a list of specific diseases and conditions that constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of any such list.

The key factor in determining whether a person is considered an "individual with handicaps" covered by Section 504 is whether the physical or mental impairment results in a substantial limitation of one or more major life activities. Major life activities, as defined in the regulation, include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The impairment must have a material effect on one's ability to perform a major life activity. For example, an individual who has a physical or mental impairment would not be considered a person with handicaps if the condition does not in any way limit the individual, or only results in some minor limitation. However, in some cases Section 504 also protects individuals who do not have a handicapping condition but are treated as though they do because they have a history of, or have been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. For example, if you have a history of a handicapping condition but no longer have the condition, or have been incorrectly classified as having such a condition, you too are protected from discrimination under Section 504. Frequently occurring examples of the first group are persons with histories of mental or emotional illness, heart disease, or cancer; of the second group, persons who have been misclassified as individuals with an intellectual disability. Persons who are not disabled may be covered by Section 504 also if they are treated as if they are handicapped, for example, if they are infected with the human immunodeficiency virus.

WHAT ARE HIDDEN DISABILITIES?

Hidden disabilities are physical or mental impairments that are not readily apparent to others. They include such conditions and diseases as specific learning disabilities, diabetes, epilepsy, and allergy. A disability such as a limp, paralysis, total blindness or deafness is usually obvious to others. But hidden disabilities such as low vision, poor hearing, heart disease, or chronic illness may not be obvious. A chronic illness involves a recurring and long-term disability such as diabetes, heart disease, kidney and liver disease, high blood pressure, or ulcers.

Approximately four million students with disabilities are enrolled in public elementary and secondary schools in the United States. Of these 43 percent are students classified as learning disabled, 8 percent as emotionally disturbed, and 1 percent as other health

impaired. These hidden disabilities often cannot be readily known without the administration of appropriate diagnostic tests.

THE RESPONSIBILITIES OF ED RECIPIENTS IN PRESCHOOL, ELEMENTARY, SECONDARY, AND ADULT EDUCATION

For coverage under Section 504, an individual with handicaps must be "qualified" for service by the school or institution receiving ED funds. For example, the ED Section 504 regulation defines a "qualified handicapped person" with respect to public preschool, elementary, secondary, or adult education services, as a person with a handicap who is:

- of an age during which persons without handicaps are provided such services;
- of any age during which it is mandatory under state law to provide such services to persons with handicaps; or
- a person for whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act.

Under the Section 504 regulation, a recipient that operates a public elementary or secondary a education program has a number of responsibilities toward qualified handicapped persons in its jurisdiction. These recipients must:

- Undertake annually to identify and locate all unserved handicapped children;
- Provide a"free appropriate public education" to each student with handicaps, regardless of the nature or severity of the handicap. This means providing regular or special education and related aids and services designed to meet the individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met;
- Ensure that each student with handicaps is educated with nonhandicapped students to the maximum extent appropriate to the needs of the handicapped person;
- Establish nondiscriminatory evaluation and placement procedures to avoid the inappropriate education that may result from the misclassification or misplacement of students;
- Establish procedural safeguards to enable parents and guardians to participate meaningfully in decisions regarding the evaluation and placement of their children; and
- Afford handicapped children an equal opportunity to participate in nonacademic and extracurricular services and activities.

A recipient that operates a preschool education or day care program, or an adult education program may not exclude qualified handicapped persons and must take into account their needs of qualified handicapped persons in determining the aid, benefits, or services to be provided under those programs and activities.

Students with hidden disabilities frequently are not properly diagnosed. For example, a student with an undiagnosed hearing impairment may be unable to understand much of what a teacher says; a student with a learning disability may be unable to process oral or written information routinely; or a student with an emotional problem may be unable to concentrate in a regular classroom setting. As a result, these students, regardless of their intelligence, will be unable to fully demonstrate their ability or attain educational benefits equal to that of nonhandicapped students. They may be perceived by teachers and fellow students as slow, lazy, or as discipline problems.

Whether a child is already in school or not, if his/her parents feel the child needs special education or related services, they should get in touch with the local superintendent of schools. For example, a parent who believes his or her child has a hearing impairment or is having difficulty understanding a teacher, may request to have the child evaluated so that the child may receive appropriate education. A child with behavior problems, or one who is doing poorly academically, may have an undiagnosed hidden disability. A parent has the right to request that the school determine whether the child is handicapped and whether special education or related services are needed to provide the child an appropriate education. Once it is determined that a child needs special education or related services, the recipient school system must arrange to provide appropriate services.

THE RESPONSIBILITIES OF ED RECIPIENTS IN POSTSECONDARY EDUCATION

The ED Section 504 regulation defines a qualified individual with handicaps for postsecondary education programs as a person with a handicap who meets the academic and technical standards requisite for admission to, or participation in, the college's education program or activity.

A college has no obligation to identify students with handicaps. In fact, Section 504 prohibits a postsecondary education recipient from making a preadmission inquiry as to

whether an applicant for admission is a handicapped person. However, a postsecondary institution is required to inform applicants and other interested parties of the availability of auxiliary aids, services, and academic adjustments, and the name of the person designated to coordinate the college's efforts to carry out the requirements of Section 504. After admission (including the period between admission and enrollment), the college may make confidential inquiries as to whether a person has a handicap for the purpose of determining whether certain academic adjustments or auxiliary aids or services may be needed.

Many students with hidden disabilities, seeking college degrees, were provided with special education services during their elementary and secondary school years. It is especially important for these students to understand that postsecondary institutions also have responsibilities to protect the rights of students with disabilities. In elementary and secondary school, their school district was responsible for identifying, evaluating, and providing individualized special education and related services to meet their needs. At the postsecondary level, however, there are some important differences. The key provisions of Section 504 at the postsecondary level are highlighted below.

At the postsecondary level it is the student's responsibility to make his or her handicapping condition known and to request academic adjustments. This should be done in a timely manner. A student may choose to make his or her needs known to the Section 504 Coordinator, to an appropriate dean, to a faculty advisor, or to each professor on an individual basis.

A student who requests academic adjustments or auxiliary aids because of a handicapping condition may be requested by the institution to provide documentation of the handicap and the need for the services requested. This may be especially important to an institution attempting to understand the nature and extent of a hidden disability.

The requested documentation may include the results of medical, psychological, or emotional diagnostic tests, or other professional evaluations to verify the need for academic adjustments or auxiliary aids.

HOW CAN THE NEEDS OF STUDENTS WITH HIDDEN DISABILITIES BE ADDRESSED?

The following examples illustrate how schools can address the needs of their students with hidden disabilities.

- A student with a long-term, debilitating medical problem such as cancer, kidney disease, or diabetes may be given special consideration to accommodate the student's needs. For example, a student with cancer may need a class schedule that allows for rest and recuperation following chemotherapy.
- A student with a learning disability that affects the ability to demonstrate knowledge on a standardized test or in certain testing situations may require modified test arrangements, such as oral testing or different testing formats.
- A student with a learning disability or impaired vision that affects the ability to take notes in class may need a notetaker or tape recorder.
- A student with a chronic medical problem such as kidney or liver disease may have difficulty in walking distances or climbing stairs. Under Section 504, this student may require special parking space, sufficient time between classes, or other considerations, to conserve the student's energy for academic pursuits.
- A student with diabetes, which adversely affects the body's ability to manufacture insulin, may need a class schedule that will accommodate the student's special needs.
- An emotionally or mentally ill student may need an adjusted class schedule to allow time for regular counseling or therapy.
- A student with epilepsy who has no control over seizures, and whose seizures are stimulated by stress or tension, may need accommodation for such stressful activities as lengthy academic testing or competitive endeavors in physical education.
- A student with arthritis may have persistent pain, tenderness or swelling in one or more joints. A student experiencing arthritic pain may require a modified physical education program.

These are just a few examples of how the needs of students with hidden disabilities may be addressed. If you are a student (or a parent or guardian of a student) with a hidden disability, or represent an institution seeking to address the needs of such students, you may wish to seek further information from OCR.

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